

STATE OF MICHIGAN
COURT OF APPEALS

KURT WINTERS, d/b/a ACTION SANITATION,

Plaintiff-Appellant,

v

PETER H. DELOOF and SARA A. BASSETT,

Defendants-Appellees.

UNPUBLISHED

July 28, 2000

No. 216537

Washtenaw Circuit Court

LC No. 98-009800 CZ

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM:

Plaintiff appeals as of right from an order granting defendants summary disposition of his unjust enrichment claim. We affirm.

Plaintiff is a contractor licensed to perform excavation work, who in 1996 contracted with an unlicensed general contractor, M.N.S. General Contractors, Inc. (hereinafter “MNS”), to install a septic system for defendants’ benefit. The septic system work performed by plaintiff constituted part of a larger land improvement project undertaken by MNS. Defendants and MNS had a verbal agreement regarding several improvements to defendants’ residence. At no time did any agreement exist between plaintiff and defendants covering the septic system services. After the septic system was installed, defendants disputed sums charged by MNS for the improvements, and the quality of MNS’ workmanship and the materials used in the improvements.

In April 1997, MNS sued defendants on both a construction lien and its contract with defendants, seeking its damages, including over \$9,000 that MNS owed plaintiff pursuant to an MNS-plaintiff contract for installation of the septic system on defendants’ property. The court granted defendants summary disposition with respect to all of MNS’ claims regarding the improvements, including the septic system, because MNS was unlicensed and consequently was barred from bringing a court action to collect compensation for its services. MCL 339.2412; MSA 18.425(2412).

In February 1998, plaintiff sued defendants in district court to recover for the septic system improvements, apparently alleging that defendants breached a contract. The district court granted defendants summary disposition, however, finding no contract of any kind between the parties. Plaintiff

then in July 1998 filed the instant suit alleging unjust enrichment. The trial court dismissed plaintiff's claims, finding them barred by res judicata and collateral estoppel, and alternatively that equitable relief was not available because plaintiff had an adequate remedy at law, namely a suit against MNS on the basis of the contract between plaintiff and MNS.

Plaintiff contends that the trial court erred in finding plaintiff's claim barred by res judicata and collateral estoppel because the earlier MNS suit against defendants involved the validity of the contract between MNS and defendants, while the instant case involves whether a subcontractor who performed work for defendants' benefit is entitled to seek recovery under the theory of unjust enrichment. We review de novo a trial court's summary disposition ruling and the legal issue whether res judicata precludes a claim. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Res judicata bars a subsequent action between the same parties when the essential facts or evidence are identical. *Eaton Co Bd of Road Comm'rs v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994). Res judicata requires that (1) the prior action was decided by a final decision on the merits, (2) the matter contested in the second case was or could have been resolved in the first, and (3) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994); *Eaton Co Bd of Rd Comm'rs*, *supra* at 375-376.

The disposition of MNS' prior claims against defendants precludes plaintiff's instant claim against defendants. The dismissal of MNS' claims against defendants pursuant to the court's grant of summary disposition constitutes a final judgment on the merits. *King v Michigan Consolidated Gas Co*, 177 Mich App 531, 535; 442 NW2d 714 (1989). Both the prior MNS claims and plaintiff's instant claim sought recovery from defendants for the value of plaintiff's septic system work. While plaintiff asserts that the subject matter of the prior MNS case (breach of contract) differs from the subject matter of the instant case (unjust enrichment), MNS with reasonable diligence could have raised unjust enrichment as a separate theory of recovery for defendants' alleged nonpayment for the improvements commissioned or undertaken by MNS, which included the septic system plaintiff installed. *Limbach v Oakland Bd of Road Comm'rs*, 226 Mich App 389, 396; 573 NW2d 336 (1997). Although plaintiff technically was not a party to the previous lawsuit, plaintiff and MNS are privies. Privity includes relationships such as principal and agent, master and servant, or indemnitor and indemnitee, in which one person is "so identified in interest with another that he or she represents the same legal right." *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270, modified in part on other grounds 431 Mich 898 (1988). The money owed to plaintiff for its septic system services stems from its contractual relationship with MNS, whom defendants hired to perform improvements. In the previous suit, MNS sought from defendants recovery of the amount of septic system improvements so it could satisfy its contractual obligation to recompense plaintiff for its services. Accordingly, MNS previously represented the same legal right plaintiff now asserts.

We conclude that the trial court correctly ruled that the disposition with prejudice of MNS' prior claims against defendants operated as res judicata with respect to plaintiff's instant claim against defendants, *Kosiel*, *supra*; *Eaton Co Bd of Road Comm'rs*, *supra*, and that summary disposition of plaintiff's claim therefore was proper pursuant to MCR 2.116(C)(7). Although the trial court

incorrectly ruled that plaintiff's claim was barred by collateral estoppel, *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990) (noting collateral estoppel applies only when an issue was actually litigated and necessarily determined in a prior action), we will not reverse when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).¹

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer

¹ In light of our conclusion concerning res judicata, we need not address plaintiff's further argument that the trial court erred in finding plaintiff's unjust enrichment claim precluded by the existence of an express contract covering the septic system services. We note briefly, however, that while plaintiff provided defendants services, these services arose from plaintiff's contract with MNS. Plaintiff had no agreement with defendants. Thus, although defendants received a benefit from plaintiff, the trial court properly found that plaintiff's equitable claim against defendants was precluded by the existence of an express contract between plaintiff and MNS concerning the septic system services. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 185-186; 504 NW2d 635 (1993) (The doctrine of unjust enrichment represents a constructive or quasi contract that vitiates normal contract principles and therefore will not be applied "where contracts, implied in fact, must be established, or [to] substitute one promisor or debtor for another."); *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997) (An implied contract theory cannot be relied on when an express contract covers the same subject matter.). Plaintiff should have sought relief from MNS on the basis of its contract with MNS.